

# Presentation

<b>Agenda Item #</b>	2
<b>Meeting Date</b>	April 18, 2005
<b>Prepared By</b>	Barbara B. Matthews
<b>Approved By</b>	

<b>Discussion Item</b>	Presentation by Assistant Attorney General Jack Schwartz on the Open Meetings Act
<b>Background</b>	<p>In recent months, the City Council has expressed a desire to learn more about the requirements of the Maryland Open Meetings Act. Assistant Attorney General Jack Schwartz will provide an overview of the Open Meetings Act for the benefit of the City Council and the public.</p> <p>Mr. Schwartz has served as counsel to the Open Meetings Compliance Board since it was formed. He has also written and lectured extensively on open meetings and public information issues.</p>
<b>Policy</b>	As a public body, the City Council is subject to the Maryland Open Meetings Act. Additionally, Council appointed boards and commissions are subject to the provisions of the Open Meetings Act.
<b>Fiscal Impact</b>	None
<b>Attachments</b>	Copy of PowerPoint presentation prepared by Assistant Attorney General Jack Schwartz
<b>Recommendation</b>	The City Council will hear the presentation of Assistant Attorney General Jack Schwartz and have an opportunity to ask him questions regarding the Maryland Open Meetings Act.
<b>Special Consideration</b>	

# Maryland Open Meetings Act

## Overview

Jack Schwartz  
Assistant Attorney General



## Presentation Objective 1: Coverage of the Act

- “Public body”
- “Meeting”
  - quorum
  - public business
- Topic of the meeting
  - scope of “executive function” exclusion



## Presentation Objective 2: Requirements of the Act



- Notice
- Conduct of open meeting
- Closing a meeting
- Minutes
- Enforcement

## Coverage of the Act: “Public body”



- All public bodies: 2+ members
  - meetings of single official not covered
- Most public bodies: formal legal creation
- Formal creation:
  - State law: Constitution, statute, rule, executive order
  - local law: charter, ordinance, rule, executive order
  - public body action: rule, resolution, bylaw
- Local cabinets are not public bodies

## Informally created public bodies



- 2+ members from outside government
- Appointed by:
  - Governor
  - chief executive of political subdivision
  - official subject to Governor's or chief executive's policy direction (effective 10/1/04)

## Special issues re public bodies



- Corporate board of directors
  - private corporations generally not covered
  - but: quasi-governmental corporations might be
- Committees/subcommittees of a public body
  - might or might not be a separate public body
  - depends on method of creation

## Coverage of the Act: “Meeting”



- Meeting must involve:
  - convening of a quorum
    - convening = simultaneous interaction
    - quorum = majority (unless local requirement says otherwise)
  - consideration or transaction of public business
    - entire process covered
    - social or political gatherings not covered

## Special issues re meetings



- Conference calls
- E-mail
- Site visits
- Retreats
- Joint meetings
- Someone else's meeting
  - presence of majority ≠ “meeting”

## Coverage of the Act: Topic of Discussion



- A public body must comply with the Act when it is:
  - legislating or rulemaking
  - otherwise making new policy, in any form
  - approving, disapproving, or amending a contract
  - approving, disapproving, or amending a budget
  - considering whether to grant a license
  - considering any zoning matter

## Exclusions from the Act



- A public body need not comply with the Act when it is:
  - considering an administrative case subject to judicial review (quasi-judicial function)
  - engaged in an “executive function”
    - but remember: licensing and zoning are always covered

## The Mysterious Executive Function Exclusion



- Not within other defined functions
- Not creation of new law or policy
- Administering existing law or policy
  - great care needed when same body wears two hats, executive and legislative
- The special case of budget preparation
  - executive function during preparation phase
  - quasi-legislative function during formal approval process

## Executive Function Applies, Act Does Not



- Prior law *embodies* policy decision ⇒
- Public body *administers* prior law ⇒
- Executive function exclusion applies

## Executive Function Does Not Apply, Act Does



- Prior law *authorizes* body to make policy decision ⇒
- Body *considers* policy decision ⇒
- Executive function exclusion does not apply
- Be careful: If Act applies at all, it applies to the entire process

## Last Words on Coverage Issues



- If Act does not apply, none of its requirements must be followed
- But: maybe other law does apply
  - e.g. charter, ordinance, specific state statute
- Don't want the headache of trying to figure out coverage?
  - ⇒ **Give notice and hold an open meeting** ⇐



## Notice of Meetings



- Timing
  - reasonably in advance
  - last-minute meetings okay if needed
- Content
  - time, place, open/closed status
  - agenda optional -- changes in announced agenda okay
- Method -- any reasonable method okay
  - e.g. posting where people know to look
- Retention -- keep for at least a year

## Conducting Open Meetings



- Accessible location
  - reasonable size, convenient for attendees
  - open to people with disabilities (≠ ADA compliance)
- Public observation -- participation optional
- Cameras/tape recorders may not be barred
- Documents referred to during meeting -- access determined by PIA

## Closing a Meeting



- Identifying a specific exception
- Procedural requirements
  - public vote, written statement
    - reason, legal citation, topics
  - retention -- keep for at least a year

## Exceptions: The Basics



- Exceptions to be construed narrowly
- Stay within cited exception
- When discussion within exception ends, go back to open session

## Frequently Cited Exceptions



- Specific personnel matters
  - identifiable individuals, not categories of employees
- Legal advice
  - active interchange, not passive presence
- Litigation
- Property acquisition
- Procurement

## Minutes



- Duty of timely preparation
- Content: item, action, votes
- Open meeting minutes
  - to be made available on request
  - tape recording ≠ minutes
- Closed meeting minutes
  - sealed
  - publicly available summary
  - retention -- keep for at least a year

## Enforcement



- Open Meetings Compliance Board
  - simplified complaint procedure
  - advisory only
- Circuit court
  - may overturn public body's action if necessary
  - may award attorney's fees to winning plaintiff
    - new legislation: standing to sue
  - may assess civil penalty on defiant members

## More Information



- Open Meetings Act Manual (2004)
  - narrative, text of Act, forms, index
  - available via Internet or hard copy (\$10.00)
- Compliance Board opinions
  - all on Web
  - e-mail distribution available
  - requests to [kizdebski@oag.state.md.us](mailto:kizdebski@oag.state.md.us)
- Internet access: [www.oag.state.md.us](http://www.oag.state.md.us)
  - click on "Open Government," then "About the Maryland Open Meetings Act"